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In the Supreme Court of the United States

OCTOBER TERM, 1998

UNUM LIFE INSURANCE COMPANY OF AMERICA,
Petitioner,

v.

JOHN E. WARD,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

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BRIEF OF THE BUSINESS ROUNDTABLE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Amicus will address the following questions:

1. Whether a state common-law rule that imposes obligations on employee welfare plans is preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*

2. Whether a state common-law rule that imposes obligations on plans that are inconsistent with those stated in the plan documents is preempted by ERISA.

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INTEREST OF THE *AMICUS CURIAE*

The Business Roundtable is an association of chief executive officers of leading U.S. corporations with a combined workforce of more than 10 million employees in the United States; these corporations sponsor plans that provide health insurance for some 25 million people.[1] The chief executives are committed to advocating public policies that foster vigorous economic growth; a dynamic global economy; and a well-trained and productive U.S. workforce essential for future competitiveness. Established in 1972, the Roundtable was founded in the belief that chief executives of major corporations should take an increased role in the continuing debates about public policy.

The proper interpretation of ERISA preemption principles is a matter of profound importance both to the companies represented in the Roundtable and to those companies' employees. This Court has noted "the centrality of pension and welfare plans in the national economy, and their implications for the financial security of the Nation's work force." *Boggs* v. *Boggs*, 117 S. Ct. at 1754, 1760 (1997). Yet the rule adopted by the court of appeals in this case will lead to the imposition of inconsistent obligations on ERISA plans, interfere with sound plan administration, and ultimately redound to the disadvantage of plan beneficiaries by forcing reductions in plan benefits — or by inducing employers to refrain from offering plans altogether. Because these consequences would injure companies and employees

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[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief *amicus curiae*. Their letters of consent have been filed with the Clerk of the Court.

Pursuant to Rule 37.6 of the Rules of this Court, *amicus* states that this brief was not authored in whole or in part by counsel for a party, and no person or entity, other than *amicus* or its members, made a monetary contribution to the preparation or submission of this brief.

throughout the Nation, *amicus* submits this brief to assist the Court in the resolution of this case.

STATEMENT

1. The Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001 *et seq.*, is a comprehensive statute that regulates both pension plans and welfare plans that "provid[e] employees with fringe benefits." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 90 (1983). This case concerns the provisions of ERISA that address the statute's preemptive effect on state law. Section 514(a), the "preemption clause," preempts "any or all State laws insofar as they may now or hereafter relate to any employee benefit plan" covered by ERISA. 29 U.S.C. § 1144(a). State laws that relate to ERISA plans may be saved from preemption by the statute's "saving clause," however, if they "regulate[] insurance, banking, or securities." Section 514(b)(2)(A), as set forth in 29 U.S.C. § 1144(b)(2)(A).

2. In this case, petitioner UNUM Life Insurance Company of America ("UNUM") issued a group long-term disability policy to fund an employee welfare benefit plan sponsored by Management Analysis Company ("MAC"). MAC served as the administrator of the plan, but UNUM was responsible for claims handling and payment functions, as well as for the fiduciary review required by § 503 of ERISA. Respondent John Ward, who served as MAC's President and Chief Executive Officer, was a participant in the plan. Ward asserts that he became disabled in May 1992, but he did not submit a claim under the disability policy until April 1994, nearly two years after the onset of the claimed disability. Pet. App. 2a-3a. UNUM denied Ward benefits because his submission was untimely under the policy, which requires a beneficiary to submit a written notice of claim within 30 days of the onset of disability, and to submit a written proof of claim no later than one year and 180 days after the onset of disability. *Id.* at 4a-5a, 42a-43.

Ward then brought this suit against the plan and UNUM, seeking payment of plan benefits. The district court rejected the claim (Pet. App. 27a-33a), but the court of appeals reversed. *Id.* at 1a-25a. The court agreed that "Ward's submission of notice and proof of his claim plainly was untimely under the express terms of the UNUM policy." *Id.* at 5a. But the court nevertheless held that two California common law rules allowed Ward's claim to survive: the "notice-prejudice rule," which the court characterized as "prevent[ing] an insurance company from avoiding liability on the basis of untimely notice or submission of proof unless the company proves it has been substantially prejudiced by the delay" (*Cisneros* v. *UNUM Life Insurance Company of America*, 134 F.3d 939, 943 (9th Cir. 1998), petition for cert. filed, 66 U.S.L.W. 3773 (U.S. May 20, 1998), No. 98-1867); and the so-called "*Elfstrom* rule," which holds that an employer that performs administrative tasks under an insured welfare plan is the agent of the insurer. Pet. App. 8a-12a.

The court of appeals rejected UNUM's argument that these state common law rules were preempted by ERISA. Relying on its decision in *Cisneros*, the court first held that the notice-prejudice rule is saved from preemption by ERISA's saving clause. Pet. App. 5a-6a. The court went on to hold that the *Elfstrom* rule is not preempted by the preemption clause because "*Elfstrom* does not dictate the benefits to be paid or the manner in which the plan will be administered. * * * Nor does *Elfstrom* create an 'alternate enforcement mechanism' for ERISA plan obligations beyond those set forth in the statute." *Id.* at 21a-22a. The court remanded the case for factual findings related to the application of these two state law rules. *Id.* at 25a.

INTRODUCTION AND SUMMARY OF ARGUMENT

A. The proper interpretation of ERISA's preemption provisions is a matter of enormous importance to companies

and employees across the Nation. As Congress explained when it enacted ERISA almost 25 years ago,

> the growth in the size, scope, and numbers of employee benefit plans in recent years has been rapid and substantial; * * * the continued well-being and security of millions of employees and their dependents are directly affected by these plans; * * * they are affected with a national public interest[;] [and] they have become an important factor affecting the stability of employment and the successful development of industrial relations * * *.

29 U.S.C. § 1001(a). Benefit plans have only grown in importance in the intervening years, as the number of beneficiaries has continued to increase.

Congress recognized the centrality of benefit plans to the national economy by providing, with the enactment of ERISA, that the regulation of such plans is "exclusively a federal concern." *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981). Congress therefore itself established the rules governing plan administration, using ERISA to "set[] various uniform standards, including rules concerning reporting, disclosure, and fiduciary responsibility, for both pension and welfare plans." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 91 (1983). The result was "an intricate, comprehensive statute." *Boggs* v. *Boggs*, 117 S. Ct. 1754, 1760 (1997).

Congress also recognized that the preemption of state laws that relate to ERISA plans is a crucial element of this regime and is essential to protect the interests of plans, of beneficiaries, and of employers. Members of Congress explained during the debate on ERISA — and this Court repeatedly has agreed — that subjecting plans to the vagaries of state law would have a variety of destructive effects. Requiring plans to comply with inconsistent state rules would cause significant inefficiencies, forcing plan sponsors to vary their administrative mechanisms from State to State. Vague

or changing state laws would lead to unanticipated liability and invite continuing litigation. And conflicting state laws would create considerable uncertainty about the respective obligations of plans and their beneficiaries.

These consequences of state regulation would impose obvious and immediate costs on plans. At the same time, increased state involvement in the regulation of plans inevitably would redound to the disadvantage of plan beneficiaries. Faced with rising costs and liabilities, plan sponsors would have no choice but to reduce benefits or increase the beneficiaries' required contributions. At the extreme, increased burdens and expenses likely would discourage some employers from offering benefit plans at all.

B. These imperatives led Congress to give ERISA a notably expansive preemption provision, and they should shape the resolution of the preemption claims in this case. The *Elfstrom* rule applied by the court of appeals must be preempted because it refers directly to ERISA plans and therefore intrudes on an area of exclusive federal concern. In addition, allowing States to affect plan administration in the manner approved by the court of appeals would invite the very sort of conflicting state regulation that Congress condemned as destructive to sound plan administration. The state notice-prejudice rule approved by the Ninth Circuit also should not stand: it directly conflicts with the substantive provisions of ERISA that give plan documents controlling force, and gives an unduly broad reading to the ERISA saving clause.

ARGUMENT

In its decisions interpreting ERISA's preemption provisions, this Court has been guided both by the statute's "clearly expansive" language and by the manifest congressional purpose "to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern.'" *New York State Conference of Blue Cross & Blue*

Shield Plans v. *Travelers Insurance Co.*, 514 U.S. 645, 655, 656-657 (1995) (quoting *Alessi* v. *Raybestos-Manhattan, Inc.*, 451 U.S. 504, 523 (1981)). The decision below, however, disregarded both of these considerations. The Ninth Circuit's restrictive construction of the preemption clause is grounded on a patent misreading of this Court's decisions. And its expansive application of the insurance saving clause finds no basis either in the statutory purpose or in this Court's holdings. If not set aside, the ruling below accordingly will frustrate congressional policy, disrupting sound plan administration while injuring employees and other beneficiaries of ERISA welfare plans.

A. The Purposes Of ERISA Require An Expansive Application Of The Statute's Preemption Provision

The Court has noted on several occasions (with more than a little understatement) that the ERISA preemption provisions "'are not a model of legislative drafting'" (*FMC Corp.* v. *Holliday*, 498 U.S. 52, 58 (1990) (quoting *Metropolitan Life Ins. Co.* v. *Massachusetts*, 471 U.S. 724, 739 (1985)). When interpreting Section 514's language, it therefore is useful to begin at the beginning, with an examination of the statutory history, structure, and purpose. That background makes clear that Congress acted advisedly in developing an expansive preemption clause: any attempt to be faithful "to the objectives of the ERISA statute" (*Travelers*, 514 U.S. at 656) will leave a distinctly limited and subordinate role for state laws that bear directly on the operation of welfare plans.

1. The ERISA bills that originally passed the House and Senate contained relatively limited preemption clauses that were "applicable only to state laws relating to the specific subjects covered by ERISA." *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85, 98 (1983). See H.R. 2, 93d Cong. 2d Sess.,§ 514(a) (1974), reprinted in 3 Legislative History of the Employee Retirement Income Security Act of 1974 (Comm. Print), pp. 4057-4058 (1976) ("Legislative History")

(bill that passed House preempted laws "relat[ing] to the reporting and disclosure responsibilities, and fiduciary responsibilities, of persons acting on behalf of any employee benefit plan to which part 1 applies"); H.R. 2, 93d Cong., 2d Sess., § 699(a) (1974), reprinted in 3 Legislative History 3820 (bill that passed Senate preempted laws "relat[ing] to the subject matters regulated by this Act or the Welfare and Pension Plans Disclosure Act"). But the Conference Committee rejected those constricted provisions — as well as a narrow alternative proposed directly to the Committee by the administration (see *Shaw*, 463 U.S. at 98-99 n.19) — opting instead for a much more inclusive approach. As the Court has noted repeatedly, this history establishes that Congress acted with deliberation to make "the section's pre-emptive scope * * * as broad as its language." *Id.* at 98. See *Travelers*, 514 U.S. at 661; *FMC Corp.*, 498 U.S. at 58-59; *Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 138 (1990); *Pilot Life Ins. Co.* v. *Dedeaux*, 481 U.S. 41, 45-46 (1987).

ERISA's principal sponsors left no doubt that this "deliberately expansive" (*Pilot Life*, 481 U.S. at 45) approach to preemption was essential to protect plans from the litigation and administrative expense that would follow from the necessity of complying with varying state requirements. Senator Javits, for example, explained that

> [b]oth [the original] House and Senate bills provided for preemption of state law, but — with one major exception appearing in the House bill — defined the perimeters of preemption in relation to the areas regulated by the bill. Such a formulation raised the possibility of endless litigation over the validity of State action that might impinge on Federal regulation, as well as opening the door to multiple and potentially conflicting State laws hastily contrived to deal with some particular aspect of private welfare or pension benefit plans not clearly connected to the Federal regulatory scheme.

> Although the desirability of further regulation — at either the State or the Federal level — undoubtedly warrants further attention, on balance, the emergence of a comprehensive and pervasive Federal interest and the interests of uniformity with respect to interstate plans required — but for certain exceptions — the displacement of State action in the field of private employee benefit programs.

120 Cong. Rec. 29942 (1974).

Senator Williams agreed:

> It should be stressed that with the narrow exceptions specified in the bill, the substantive and enforcement provisions of the conference substitute are intended to preempt the field for federal regulations, thus eliminating the threat of conflicting or inconsistent State and local regulation of employee benefit plans. This principle is intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law.

120 Cong. Rec. 29933 (1974).

Indeed, Representative Dent, in an oft-quoted phrase, characterized as "the crowning achievement of this legislation, the reservation to Federal authority [of] the sole power to regulate the field of employee benefit plans." 120 Cong. Rec. 29197 (1974). He explained that this step was crucial in furthering the interests of plan *beneficiaries*:

> [w]ith the preemption of the field, we round out the protection afforded participants by eliminating the threat of conflicting and inconsistent State and local regulation. * * * The conferees, with the narrow exceptions specifically enumerated, applied this principle in the broadest sense to foreclose any non-Federal regulation of employee benefit plans. Thus, the provisions of section 514 would reach any rule, regulation, practice, or decision

> of any State, subdivision thereof or agency or instrumentality thereof * * * which would affect any employee benefit plan * * *.

Ibid.

2. The Court already has had occasion to examine the manner in which preemption advances the interests of welfare plans and plan beneficiaries. As the Court has recognized, the "most efficient way" for a plan sponsor to meet its responsibilities

> is to establish a uniform administrative scheme, which provides a set of standard procedures to guide processing of claims and disbursement of benefits. Such a system is difficult to achieve, however, if a benefit plan is subject to differing regulatory requirements in differing States. A plan would be required to keep certain records in some States but not in others; to make certain benefits available in some States but not in others; to process claims in a certain way in some States but not in others; and to comply with certain fiduciary standards in some States but not in others.

Fort Halifax Packing Co. v. *Coyne*, 482 U.S. 1, 9 (1987).

Looking to the consequences of subjecting plans to these sorts of unpredictable and varying standards, the Court recognized that "[s]uch a situation would produce considerable inefficiencies, which the employer might choose to offset by lowering benefit levels." *Fort Halifax*, 482 U.S. at 10. The Court therefore found it

> clear that ERISA's pre-emption provision was prompted by recognition that employers establishing and maintaining employee benefit plans are faced with the task of coordinating complex administrative activities. A patchwork scheme of regulation would introduce considerable inefficiencies in benefit program operation, which might lead those employers with existing plans to

> reduce benefits, and those without such plans to refrain from adopting them. Pre-emption ensures that the administrative practices of a benefit plan will be governed only by a single set of regulations.

Id. at 11. For this reason, the Court consistently has sought to "minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Ingersoll-Rand*, 498 U.S. at 142.

The concern that increasing administrative and litigation costs for plans "could work to the detriment of plan beneficiaries" (*Ingersoll-Rand*, 498 U.S. at 142) by "producing inefficiencies that employers might offset with decreased benefits" (*FMC Corp.*, 498 U.S. at 60) is not fanciful. After all, "[e]mployers or other plan sponsors are generally free under ERISA, for any reason at any time, to adopt, modify, or terminate welfare plans. * * * Nor does ERISA establish any minimum participation, vesting, or funding requirements for welfare plans as it does for pension plans." *Curtiss-Wright Corp.* v. *Schoonejongen*, 514 U.S. 73, 78 (1995). See *Metropolitan Life*, 471 U.S. at 731 ("ERISA * * * contains almost no federal regulation of the terms of benefit plans"). As a result, it is inevitable that increased burdens imposed upon plans by state law will force plan sponsors to impose corresponding increases in premiums and other employee contributions, or to reduce plan benefits to make up the difference. While the application of particular state laws in particular cases might benefit particular plaintiffs, it therefore is plain that any rule diminishing the scope of preemption would, in the long run, "decrease protection for future employees." *Moore* v. *Metropolitan Life Ins. Co.*, 856 F.2d 488, 492 (2d Cir. 1988) (Winter, J.).

Indeed, subjecting plans to varying and changing state laws would have a complex and cascading series of effects — all of them unfortunate. Many employees would be deprived

of insurance protection altogether; in the health setting, for example, even relatively small cost increases drive large numbers of people off of the insurance rolls. See Congressional Budget Office, *Economic Implications of Rising Health Care Costs* (Oct. 1992), at 42-45. Moreover, as healthier employees decided to forgo participation in increasingly expensive health plans, the pool of employees that shares the risk would both decrease and include ever greater percentages of high-risk participants who make demands on the plan, a spiral that would lead to further cost increases and declining participation. Cf. *Metropolitan Life*, 471 U.S. at 731. At the same time, the unpredictability and expense inherent in a regime that is controlled by inconsistent and changing state laws would create "substantial disincentives for even offering [welfare] plans." *Moore*, 856 F.2d at 492. Given "the centrality of pension and welfare plans in the national economy, and their implications for the financial security of the Nation's work force" (*Boggs* v. *Boggs*, 117 S. Ct. 1754, 1760 (1997)), it comes as no surprise that a Congress faced with these dangers opted for a notably broad approach to preemption.

3. Against this background, the one constant in the Court's ERISA holdings is the recognition "that ERISA's pre-emption provision is 'clearly expansive.'" *California Div. of Labor Standards Enforcement* v. *Dillingham Constr., N.A., Inc.*, 117 S. Ct. 832, 837 (1997) (quoting *Travelers*, 514 U.S. at 655). See, *e.g.*, *Barnett Bank* v. *Nelson*, 517 U.S. 25, 38 (1996); *FMC Corp.*, 498 U.S. at 58; *Ingersoll-Rand*, 498 U.S. at 138; *Fort Halifax Packing*, 482 U.S. at 9; *Metropolitan Life*, 471 U.S. at 732; *Shaw*, 463 U.S. at 96, 98. It necessarily follows that "ERISA certainly contemplated the pre-emption of substantial areas of traditional state regulation." *Dillingham*, 117 S. Ct. at 840. With that point in mind, the Court developed what has become a familiar two-part test for ERISA preemption:

> We have repeatedly stated that a law "relate[s] to" a covered employee benefit plan for purposes of § 514(a) "if it has a connection with or reference to such a plan." *Shaw*, [463 U.S.] at 97. * * * This reading is true to the ordinary meaning of "relate to," * * * and thus gives effect to the "deliberately expansive" language chosen by Congress. *Pilot Life*, [481 U.S.] at 46. * * * Under § 514(a), ERISA pre-empts any state law that refers to or has a connection with covered benefit plans (and that does not fall within a § 514(b) exception) "even if the law is not specifically designed to affect such plans, or the effect is only indirect," *Ingersoll-Rand*, [498 U.S.] at 139, and even if the law is "consistent with ERISA's substantive requirements," *Metropolitan Life*, [471 U.S.] at 739.

District of Columbia v. *Greater Washington Bd. of Trade*, 506 U.S. 125, 129-130 (1992) (footnote omitted).

The court of appeals nevertheless declined to apply this test, evidently because it believed that *Travelers* marked a sharp departure from the Court's prior ERISA jurisprudence. See Pet. App. 20a-21a ("the *Travelers* Court concluded that two types of state laws 'relate to' employee benefit plans within § 514(a): laws that 'mandat[e] employee benefit structures or their administration,' and laws that 'provid[e] alternative enforcement mechanisms'"); *Cisneros*, 134 F.3d at 943 n.3 (citing *Travelers* for the proposition that "[t]he Supreme Court recently has narrowed the scope of ERISA's 'related to' language"). But that conclusion is insupportable. *Travelers* simply confirmed a proposition that long had been implicit in this Court's decisions: the term "relate to" cannot be taken "to the furthest reach of its indeterminacy" because "'[r]eally, universally, relations stop nowhere.'" 514 U.S. at 655 (citation omitted). Pointing to that insight, the Court in *Travelers* held that, except in extreme circumstances, a state law will not be preempted if its only connection to an ERISA plan is "an indirect economic effect on the relative costs of

various health insurance packages." *Id.* at 662. See *id.* at 659-660, 664, 668.

In reaching that conclusion, however, the Court in *Travelers* reaffirmed the view that "[t]he governing text of ERISA is clearly expansive" (514 U.S. at 655); it agreed that the preemption clause "indicates Congress's intent to establish the regulation of employee welfare benefit plans 'as exclusively a federal concern'" (*id.* at 656-657 (citation omitted)); it confirmed that "Congress's extension of pre-emption to all 'state laws relating to benefit plans' was meant to sweep more broadly than 'state laws dealing with the subject matters covered by ERISA'" (*id.* at 661 (quoting *Shaw*, 463 U.S. at 98 & n.19)); and it disavowed *none* of the Court's prior decisions in this area. Indeed, more recently, in *Dillingham*, the Court expressly restated the controlling "two-part inquiry: A 'law "relate[s] to" a covered employee benefit plan for purposes of § 514(a) "if it [1] has a connection with or [2] reference to such a plan."'" 117 S. Ct. at 837 (quoting *Greater Washington Bd. of Trade*, 506 U.S. at 129, and *Shaw*, 463 U.S. at 96-97) (bracketed material added by the Court). The Ninth Circuit's failure to apply that test here led it fundamentally astray.

B. The *Elfstrom* Rule "Relates To" ERISA Plans And Therefore Is Preempted

In upholding the *Elfstrom* rule's application to ERISA plans, the court of appeals paid no heed at all to the policies served by the preemption clause. As we have explained, a restrictive approach to preemption harms interests that Congress regarded as crucial to the sound operation of plans. Yet the court of appeals endorsed an approach that would subject plans to inconsistent state rules, that would impose substantial added expenses on plan sponsors, and that — while perhaps benefitting Mr. Ward — would injure plan beneficiaries in the aggregate. A proper application of this Court's precedents, and a faithful adherence to ERISA's

governing principles, require setting the Ninth Circuit's decision aside.

1. At the outset, the *Elfstrom* rule must be preempted because it has a "reference" to ERISA plans. "Where a State's law acts immediately and exclusively on ERISA plans, * * * or where the existence of ERISA plans is essential to the law's operation, * * * that 'reference' will result in pre-emption." *Dillingham*, 117 S. Ct. at 838. That plainly is the case here.

Elfstrom addressed an employer's obligation when it acts as the administrator of a group insurance policy that it obtained for the benefit of its employees. See *Elfstrom* v. *New York Life Ins. Co.*, 67 Cal.2d 503, 509-510 (1967). The California Supreme Court explained that "[t]he administration of a group policy may be handled either by the insurer itself on the basis of information furnished to it by the employer or, as in the present case, by the employer." *Id.* at 509. With that understanding, the court addressed the question "whether an employer acts as the agent of the insurer or of the employees in administering a policy of group insurance." *Id.* at 511. The answer to that question — the *Elfstrom* "rule" announced by the California court and applied by the Ninth Circuit in this case — is that "the employer is the agent of the insurer in performing the duties of administering group insurance policies." *Id.* at 512.

The *Elfstrom* rule therefore is expressly and specifically designed to govern in only one circumstance: when an employer has obtained and is administering a group insurance policy for the benefit of its employees. See also *Metropolitan Life*, 471 U.S. at 727 (describing group insurance). And that means, of course, that the rule is directed expressly and exclusively *at ERISA welfare plans*, which are defined to include, among other things, any "'plan, fund, or program' maintained for the purpose of providing medical or other health benefits for employees or their beneficiaries 'through

the purchase of insurance or otherwise.'" *Greater Washington Bd. of Trade*, 506 U.S. at 127 (quoting ERISA § 3(1), 29 U.S.C. § 1002(1)). See *Travelers*, 514 U.S. at 650-651. The *Elfstrom* rule's "reference" to ERISA plans thus would appear inarguable.

Petitioner's preemption challenge to the *Elfstrom* rule therefore is governed by the repeated decisions of the Court that "'have virtually taken it for granted that state laws which are "specifically designed to affect employee benefit plans" are pre-empted under § 514(a).'" *Ingersoll-Rand*, 498 U.S. at 140 (quoting *Mackey* v. *Lanier Collection Agency & Serv., Inc.*, 486 U.S. 825, 829 (1988)). In *Ingersoll-Rand*, for example, the Court held preempted a state common law action that was brought by an employee who claimed that he had been discharged to prevent the attainment of pension benefits; the Court explained that the state "cause of action makes specific reference to, and indeed is premised on, the existence of a pension plan." *Ibid.* Similarly, in *Greater Washington Board of Trade* the Court struck down a local law that required employers to provide health insurance to injured employees who were eligible for workers' compensation. Explaining that the required coverage was measured by the insurance benefits provided to active employees, the Court held that "any state law imposing requirements by reference to such covered programs must yield to ERISA." 506 U.S. at 130-131. And in *Mackey*, the Court invalidated a state law that specifically *exempted* ERISA plans from an otherwise generally applicable state garnishment provision. 486 U.S. at 828 n.2, 829-830. See also *FMC*, 498 U.S. at 59 (state statute makes a "reference" to ERISA plans and is preempted because it described benefits payable by various health plans).

Rather remarkably, the court of appeals made no mention of *any* of these decisions. Perhaps the court believed that all had been swept away by *Travelers*. If so, it most assuredly was misguided; each of these decisions recently was cited with approval in *Dillingham*. See 117 S. Ct. at 837-838. In

any event, the Ninth Circuit's only effort to explain its holding was the assertion that "*Elfstrom* does not dictate the benefits to be provided or the manner in which the plan will be administered." Pet. App. 21a. Even if the court's characterization of *Elfstrom* were correct, however, its observation would be beside the point, for precisely the same thing could be said of the state laws that were invalidated in *Ingersoll-Rand* and *Mackey*: they also did not dictate benefits or mandate particular methods of plan administration.[2] As in those cases, there is no doubt that the *Elfstrom* rule "act[s] exclusively on, or rel[ies] on the existence of, ERISA plans" (*Boggs*, 117 S. Ct. at 1769 (Breyer, J., dissenting)), and that is enough to require preemption. Under any reading of Section 514(a), *Elfstrom* thus intrudes into "the field of laws regulating 'employee benefit plan[s] described in [29 U.S.C. §] 1003(a).'" *Dillingham*, 117 S. Ct. at 843 (Scalia, J., concurring) (quoting 29 U.S.C. § 1144(a)).

2. The *Elfstrom* rule — and all similar state agency rules — also must be preempted because it has a "connection with" ERISA plans. "[T]o determine whether a state law has the forbidden connection, [the Court] look[s] both to 'the objectives of the ERISA statute as a guide to the scope of the state law that Congress understood would survive,' * * * as well as to the nature of the effect of the state law on ERISA plans." *Dillingham*, 117 S. Ct. at 838 (quoting *Travelers*, 514 U.S. at 656-656). That inquiry requires preemption here because it is settled that one of ERISA's principal objectives is the elimination of state rules "that risk subjecting plan

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[2] In fact, the court of appeals' description of *Elfstrom* plainly was incorrect; application of the rule has a direct impact on plan administration by dictating the manner in which notice of claims may be provided. Moreover, as we also explain below in connection with the notice-prejudice rule, application of the *Elfstrom* rule requires a departure from the claims procedure that is spelled out in the written plan documents.

administrators to conflicting state regulations." *FMC Corp.*, 498 U.S. at 59.

That risk is apparent here. If agency rules such as the one stated in *Elfstrom* survive, particular actions that are related to plan administration will have radically differing consequences in different jurisdictions. In States that make use of an *Elfstrom* or related rule, the employer's knowledge would be imputed to the insurer, resulting in liability for benefits; in other States, the terms of the plan would govern and liability would *not* attach. As a result, prudent employers that wish to avoid unanticipated liability would have to make use of differing administrative mechanisms in different jurisdictions, or would have to base a nationwide system of administration on the rules of the State that provides for the most expansive system of liability. In either case, the employer would be "required to accommodate conflicting regulatory schemes in devising and operating a system for processing claims and paying benefits — precisely the burden that ERISA pre-emption was intended to avoid." *Fort Halifax*, 482 U.S. at 10. See generally *Pilot Life*, 481 U.S. at 47-48; *Metropolitan Life*, 471 U.S. at 739. This accordingly is a case where "state law intrudes into an area Congress (given ERISA's basic objectives) would have wanted to reserve exclusively for federal legislation." *Boggs*, 117 S. Ct. at 1769 (Breyer, J., dissenting). See *Ingersoll-Rand*, 498 U.S. at 142.

C. The Notice-Prejudice Rule Is Preempted Because It Conflicts With Substantive Provisions of ERISA And Is Not Validated By The Insurance Saving Clause

The court of appeals also erred in its conclusion that the state-law "notice-prejudice" rule survives preemption. In *Cisneros*, the decision whose reasoning was adopted by the court below, the Ninth Circuit appears to have assumed (correctly) that the rule falls within the scope of ERISA's

preemption clause. See 134 F.3d at 943.[3] But the court's reasoning hopped the track when it went on to hold that preemption is vitiated by ERISA's insurance saving clause. The court erred for two independent reasons. Entirely apart from the meaning of the saving clause, the notice-prejudice rule must fall because it directly conflicts with ERISA's substantive provisions. And the court's analysis of the saving clause was, in any event, inconsistent both with this Court's decisions and with fundamental ERISA policy. Again, then, the court of appeals' approach runs directly counter to the interest of plans, of plan sponsors, and of plan beneficiaries.

1. The court of appeals correctly held that the terms of the UNUM disability policy — which is the controlling ERISA plan document in this case — "unambiguously establish that * * * timely submission of proof is a condition precedent to payment of benefits." The court also recognized that "Ward's submission of notice and proof plainly was untimely under the express terms of the UNUM policy." Pet. App. 5a. Having reached that conclusion, however, the court skipped immediately to the question whether the notice-prejudice rule is saved by the insurance saving clause; the court did not pause to consider the possibility that a state-law rule cannot be given force if it requires a court to disregard the terms of a written ERISA plan. That was a fatal oversight.

In fact, this Court has emphasized that ERISA is in substantial part "built around reliance on the face of written plan documents." *Curtiss-Wright*, 514 U.S. at 83. As the Court has explained, one of "ERISA's core functional requirements" is

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[3] As the United States recognizes in its brief in this case, there can be no doubt that the notice-prejudice rule relates to ERISA plans; it requires use of a particular method of administration, setting aside the choice made by the plan sponsor.

> that "[e]very employee benefit plan shall be established and maintained *pursuant to a written instrument*." 29 U.S.C. § 1102(a)(1) (emphasis added). In the words of a key congressional report, "[a] written plan is to be required in order that every employee may, *on examining the plan documents*, determine exactly what his rights and obligations are under the plan." H.R. Rep. No. 93-1280, p. 297 (1974) (emphasis added). ERISA gives effect to this "written plan documents" scheme through a comprehensive set of "reporting and disclosure" requirements * * * .

Ibid. Indeed, "plan administrators appear to have a statutory responsibility actually to run the plan in accordance with the currently operative, governing plan documents." *Id.* at 84. See 29 U.S.C. § 1104(a)(1)(D) (plan administrators have duty to run the plan "in accordance with the documents and instruments governing the plan insofar as such documents and instruments are consistent with the provisions of [ERISA]"). See also 29 C.F.R. § 2560.503-1(d) ("[a] claim [for plan benefits] is filed when the requirements of a reasonable claim filing procedure *of a plan* have been met") (emphasis added).

The California rule at issue here is flatly inconsistent with this central element of ERISA. The federal statute *requires* administrators to implement the provisions of the plan documents, and gives those documents the crucial role in informing employees about both their rights and their obligations. The notice-prejudice rule, on the other hand, authorizes the employee to *disregard* obligations stated in those documents — and would *require* administrators to act in a manner that the documents do not authorize. In these circumstances, "there is a conflict [between ERISA and the state law], which suffices to resolve the case." *Boggs*, 117 S. Ct. at 1760. Whatever the meaning of the preemption and saving clauses, preemption is mandated by "the state law's frustration of congressional intent." *Shaw*, 463 U.S. at 97

n.15. See *Pilot Life*, 481 U.S. at 57; *Alessi*, 451 U.S. at 524.

2. While the existence of a direct conflict with ERISA's substantive provisions means that the saving clause (whatever its proper construction) cannot save California's notice-prejudice rule, it should be added that the court of appeals erred in its understanding of the clause. It is settled that, to determine whether a state law is one regulating insurance for purposes of the saving clause, the Court first takes a "'common-sense view" of the language." *Pilot Life*, 481 U.S. at 48. The Court then looks to the three criteria used to determine whether a practice falls within the "business of insurance" for purposes of the McCarran-Ferguson Act:

> "*First*, whether the practice has the effect of transferring or spreading a policyholder's risk; *second*, whether the practice is an integral part of the policy relationship between the insurer and the insured; and *third*, whether the practice is limited to entities within the insurance industry."

Id. at 48-49 (quoting *Union Labor Life Ins. Co.* v. *Pireno*, 458 U.S. 119, 129 (1982)). See *Metropolitan Life*, 471 U.S. at 740-743.

While the Court has held that the presence of a single one of these criteria is *not* sufficient to warrant treatment of a given practice as part of the business of insurance (see *Pilot Life*, 481 U.S. at 51), it *never* has held a state law *to* involve the regulation of insurance unless all of the criteria are present. The Court should not depart from that approach here. That is especially so because all of the relevant considerations actually point *away* from the conclusion that the notice-prejudice rule regulates the business of insurance — meaning that the saving clause cannot apply. Indeed, while the saving clause necessarily countenances a degree of inconsistency in the rules governing insured plans (see, *e.g.*, *Metropolitan Life*, 471 U.S. at 747), the expansive approach

taken to the clause by the court of appeals would subject plans to a virtually limitless and undefined body of state common law, which would cause the very inefficiency, uncertainty, and expense that Congress understood to harm the sound operation of ERISA plans.

First, under a "common sense" approach the notice-prejudice rule does not qualify as an insurance regulation. In holding to the contrary, the court of appeals opined that the rule "is directed specifically at the insurance industry and is applicable only to insurance contracts." *Cisneros*, 134 F.3d at 945. But as petitioner demonstrates (at Br. 27-30), the court was wrong about this as a matter of state law because the rule is only one manifestation of a broader and generally applicable rule of contract law; "it is plain that the [rule] is not limited to entities within the insurance industry." *United States Dep't of the Treasury* v. *Fabe*, 508 U.S. 491, 517 (1993) (Kennedy, J., dissenting). Even if the rule is "identified * * * with the insurance industry," "the roots of the law are firmly planted in the general principles of [California] * * * contract law." *Pilot Life*, 481 U.S. at 50. As a consequence, "a common-sense understanding of the phrase 'regulates insurance' does not support the argument that the [notice-prejudice rule] falls under the saving clause." *Ibid.*

Moreover, courts should be especially cautious when asked to hold that common law tort or contract rules qualify as regulations of insurance within the meaning of ERISA or the McCarran-Ferguson Act. Such rules have nothing in common with considered state statutory or regulatory oversight regarding benefits, rates, insurance reserves, and the like, which were the central congressional concern at the time of the enactment of the McCarran-Ferguson Act. See, *e.g.*, *Group Life & Health Ins. Co.* v. *Royal Drug Co.*, 440 U.S. 205, 217-219 (1979). As the claims in *Pilot Life* and this case illustrate, according the same protection to particular applications of common law rules would invite manipulation

and impossibly fine line-drawing, while giving the McCarran-Ferguson Act and the ERISA insurance saving clause an essentially limitless sweep.

Second, the court of appeals itself acknowledged that the rule "does not spread the policyholder's risk within the meaning of the first McCarran-Ferguson factor." *Cisneros*, 134 F.3d at 946. That conclusion should have been dispositive. "There is general agreement that the primary concerns of an insurance contract are the spreading and the underwriting of risk, * * * and [the Court] ha[s] often recognized this central principle." *Fabe*, 508 U.S. at 511 (Kennedy, J., dissenting). See *Royal Drug*, 440 U.S. at 212, 221 (identifying the "underwriting or spreading of risk as an indispensable characteristic of insurance" and noting that "Congress understood the business of insurance to be the underwriting and spreading of risk"). It is difficult to see how the notice-prejudice rule could be a regulation of the business of insurance when the practice that it regulates "does not involve the transfer of risk from insured to insurer, the type of risk spreading that is the essence of the contract of insurance." *Fabe*, 508 U.S. at 512-513 (Kennedy, J., dissenting).

Third, the court of appeals found that the notice-prejudice rule affected an integral part of the policy relationship between insured and insurer because the rule "effectively creates a mandatory contract term." *Cisneros*, 134 F.3d at 946. On examination, however, the rule's "connection to the insurer-insured relationship is attenuated at best." *Pilot Life*, 481 U.S. at 50-51. Here, the contractual relationship runs directly between the employer and the insurance company, and it is MAC and UNUM that negotiated over contract terms and administrative requirements; the notice-prejudice rule, in contrast, affects a different relationship, that between MAC's covered employees and the insurer. Cf. *Royal Drug*, 440 U.S. at 213-213. Moreover, the rule does not affect "the *substantive* terms of insurance contracts" (*FMC*, 498 U.S. at

61 (emphasis added)) or "the *type* of insurance that an insurer may sell to the policyholder" (*Metropolitan Life*, 471 U.S. at 743 (emphasis added)), and it therefore is doubtful that it can be characterized as "regulat[ing] an *integral* part of the relationship between the insurer and the policyholder" (*ibid.* (emphasis added)); "[i]t does not follow that because an agreement is necessary to provide insurance, it is also the 'business of insurance.'" *Royal Drug*, 440 U.S. at 214 n.9.

Fourth, for reasons already explained, the notice-prejudice rule, "even if associated with the insurance industry, has developed from general principles of * * * contract law available in any [California] * * * contract case." *Pilot Life*, 481 U.S. at 51. For these reasons, the notice-prejudice rule should not be deemed saved by the saving clause.

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In enacting ERISA, Congress recognized that healthy benefit plans, regulated by predictable and uniform rules, are essential to the economic well-being of tens of millions of employees and other beneficiaries. It acknowledged that such plans are a central component of a sound relationship between companies and their employees. And by providing for the comprehensive federal regulation of welfare and pension benefit plans, it established such plans as important elements in the proper functioning of the national economy.

The approach taken by the court below, however, threatens considerable harm to those interests. It would make inevitable the application to plans of conflicting state standards, creating significant inefficiencies and expense. It would invite continuing litigation about the meaning of varying state standards. And it ultimately would injure beneficiaries by inducing plan sponsors to reduce or eliminate benefits, while creating disincentives for the creation of new plans. This Court should reject that approach, reaffirming its understanding that Congress made an expansive preemption provision a central element of ERISA.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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